

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**LAMONT WHITE,**

**Plaintiff,**

**v.**

**9:08-CV-717  
(FJS/DRH)**

**J. BERGENSTOCK, Correction Officer, Auburn Correctional Facility; MR. SENDERSON, Mental Health Unit, Auburn Correctional Facility; D. SMITH, Correction Officer, Auburn Correctional Facility; C. CLARKE, Correction Officer, Auburn Correctional Facility; T. CLARKE, Correction Officer, Auburn Correctional Facility; M. STURGEN, Registered Nurse, Upstate Correctional Facility; S. WALSH, Registered Nurse; LOUIS TISHENOR, Physician Assistant, Upstate Correctional Facility; M. SMITH, Nurse Administrator, Upstate Correctional Facility; S. DANSON, Correctional Officer, Upstate Correctional Facility; LUMBARD, Sgt., Upstate Correctional Facility; R.K. WOODS, Superintendent, Upstate Correctional Facility; HAROLD GRAHAM, Superintendent, Auburn Correctional Facility; RICHARD ROY, Inspector General; and BRIAN FISCHER, Commissioner,**

**Defendants.**

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**APPEARANCES**

**OF COUNSEL**

**LAMONT WHITE**

**01-A-4083**

Attica Correctional Facility

Box 149

Attica, New York 14011

Plaintiff *pro se*

**OFFICE OF THE NEW YORK  
STATE ATTORNEY GENERAL**

The Capitol  
Albany, New York 12224-0341  
Attorneys for Defendants

**ROGER W. KINSEY, AAG**

**SCULLIN, Senior Judge**

**ORDER**

Currently before the Court is Magistrate Judge Homer's October 23, 2009 Report-Recommendation and Order to which the parties have filed no objections. Having reviewed the Report-Recommendation and Order and finding that the same is neither clearly erroneous nor contrary to law, the Court hereby

**ORDERS** that Magistrate Judge Homer's October 23, 2009 Report-Recommendation and Order is **ACCEPTED in its entirety for the reasons stated therein**; and the Court further

**ORDERS** that Defendants' motions to dismiss are **GRANTED** with respect to all claims against Defendants **Bergenstock, Senderson, D. Smith, Walsh, Tishenor, M. Smith, Lumbard, Woods, Graham, Roy and Fisher in their individual and official capacities**; and the Court further

**ORDERS** that Defendants' motions to dismiss are **GRANTED** with respect to all claims against Defendants **Sturgen, T. Clarke, and C. Clarke in their official capacities**; and the Court further

**ORDERS** that the complaint is **DISMISSED WITHOUT PREJUDICE** with respect to all claims against Defendant **Danson** in accordance with Rule 4(m) of the Federal Rules of Civil Procedure and Local Rule 4.1(b); and the Court further


**ORDERS** that Defendants' motions to dismiss are **DENIED** with respect to Plaintiff's

Eighth Amendment and pendent state-law claims against Defendant **Sturgen** in his/her individual capacity regarding the removal of Plaintiff's neck brace; and the Court further

**ORDERS** that this matter is referred to Magistrate Judge Homer for all further pretrial matters.<sup>1</sup>

**IT IS SO ORDERED.**

Dated: November 25, 2009  
Syracuse, New York

  
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Frederick J. Scullin, Jr.  
Senior United States District Court Judge

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<sup>1</sup> The Court notes that, in addition to Plaintiff's Eighth Amendment and pendent state-law claims against Defendant Sturgen related to the removal of Plaintiff's neck brace, Plaintiff's Eighth Amendment **excessive force and pendent state-law claims against Defendants C. Clarke and T. Clarke** remain because Defendants did not move to dismiss those claims.